D.P.U. 93-37

Petition of Boston Edison Company for approval by the Department of Public Utilities pursuant to G.L. c. 164, § 17A, for the Company to invest up to $45 million in a wholly-owned, non-utility subsidiary, to be known as Boston Energy Technology Group, Inc., and to issue advances to the proposed subsidiary pursuant to a Tax Sharing Agreement between the Company and the proposed subsidiary; and pursuant to G.L. c. 164, § 94B, for approval of a related Management Services Agreement and Tax Sharing Agreement between the Company and its proposed subsidiary.

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ORDER ON JOINT OFFER FOR SETTLEMENT AND JOINT OFFER FOR PARTIAL SETTLEMENT

I. INTRODUCTION

On February 10, 1993, Boston Edison Company ("BECo" or "Company") filed with the Department of Public Utilities ("Department") a request for approval: (1) to invest up to $45 million in a wholly owned non-utility subsidiary, Boston Energy Technology Group, Inc. ("BETG") to invest in ventures in (a) Demand-Side Management ("DSM"), (b) the electric vehicle industry, and (c) electric generation, pursuant to G.L. c. 164, § 17A; (2) to enter into a Tax Sharing Agreement with BETG, pursuant to G.L. c. 164, §§ 17A and 94B; and (3) to enter into a Management Services Agreement with BETG, pursuant to G.L. c. 164, § 94B.

The Attorney General of the Commonwealth ("Attorney General") intervened pursuant to G.L. c. 12, § 11E. The Coalition of Non-Utility Generators ("CONUG") petitioned for and was denied leave to intervene. CONUG was granted limited participant status. The Town of Reading Municipal Light Department ("RMLD") petitioned for and was granted leave to intervene late.

On April 16, 1993, the Department conducted a technical session on the Company's filing. Pursuant to notice duly issued, two days of hearings were held at the offices of the Department, beginning on April 26, 1993 and ending on April 28, 1993.

In support of its petition, the Company sponsored the

testimony of three witnesses: Thomas J. May, executive vice president of BECo; Philippe Frangules, department manager of business planning for BECo; and Joseph G. Passaggio, income tax manager for BECo.

The evidentiary record includes 12 exhibits submitted by the Company, 19 exhibits submitted by the Department, and 15 responses to record requests issued by the Department and the Attorney General.

On May 14, 1993, BECo and RMLD filed with the Department a Joint Motion to Approve a Settlement Agreement ("RMLD Settlement"). On May 20, 1993, BECo, CONUG, and the Attorney General filed with the Department a Joint Motion for Approval of a Partial Settlement ("Partial Settlement"). On June 3, 1993, BECo and RMLD filed with the Department an Amended Joint Motion for Approval of the Settlement, which provided for an extension from June 10, 1993 until June 18, 1993 for issuance of a Department decision on the RMLD Settlement. Also, on June 3, 1993, BECo, the Attorney General, and CONUG filed with the Department an Amended Joint Motion for Approval of the Partial Settlement, which provided for an extension from June 10, 1993 until June 18, 1993 for issuance of a Department decision on the Partial Settlement.

II. THE COMPANY'S PROPOSAL

A. Investment in Boston Energy Technology Group, Inc.

1. Overview

The Company proposes to invest up to $45 million in BETG. This level of investment represents 4.3 percent of BECo's total equity[1] and 1.4 percent of the Company's total assets (Exh. BE-1, at 19). BECo stated that, of the total proposed investment, the largest amount most likely would be invested in DSM services, with relatively smaller amounts invested in electric vehicles and electric generation services (id.). The Company stated that the requested amount of $45 million is necessary to provide the Company with sufficient flexibility to take advantage of investment opportunities as they arise without requiring piecemeal approval through repeated applications to the Department (id. at 19-20).

The Company represented that it is seeking to expand its business activities in order to provide long term benefits for both the Company and its customers (id. at 3). The Company asserted that, since the electric utility business has reached a mature state, future growth in power sales will be modest, at best (id.). In order to assure the Company's financial strength, to attract quality employees, and to remain attractive to investors, the Company stated that it must develop new business

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[1] Total equity is defined by the Company as common stock, preferred stock, and retained earnings (Exh. BE-1, at 19).

opportunities with good growth potential (id.).

a. Demand-Side Management Services

The Company proposes that BETG develop a partnership with an experienced DSM services developer to provide performance-based DSM measures to other electric utilities (id. at 8). BECo stated that the partnership would combine BECo's existing analytical expertise in the DSM area with the operational structure of a partner company that possesses proven performance ability (id. at 9). BECo stated that this partnership could take the form of (1) the outright purchase of a DSM services developer, (2) the acquisition of a minority interest in a DSM services developer, or (3) the establishment of a joint venture with a DSM services developer.

The Company also stated that a second potential area of activity in DSM services would be to provide consulting services to utilities seeking to develop an entire DSM program or to end users of power seeking assistance with DSM installations (id.). The Company stated that since BETG might engage in activities in several discrete areas, it would consider establishing separate corporate entities to carry out these activities (id. at 9-10).

b. Electric Vehicles

The Company stated that the primary focus of BETG's efforts associated with electric vehicles would be on the distribution of electric vehicle charging equipment in a defined geographic area (id. at 14). During the course of the instant proceedings, BECo

executed an agreement with General Motors Hughes Electronics ("Hughes") which provides that BECo shall be the exclusive distributor in New England, New York, New Jersey, and Pennsylvania of electric vehicle charging systems manufactured by Hughes (Exh. DPU-1). As part of this agreement, BECo would install and maintain the Hughes charging systems (id.). In addition to its primary focus on the distribution of charging equipment, BECo stated that BETG would consider opportunities in electric vehicle consulting services, the electric vehicle conversion market, and the electrification of mass transit (Exh. BE-1, at 16-17).

c. Electric Generation Services

The third business activity that BECo proposes for BETG is the provision of consulting and operational services to owners of electric power plants (id. at 17). Specifically, BECo proposes that BETG would provide services such as advice on fuel purchasing, advice on the wholesale marketing of electric power, and the operation of third party power plants (id.). The Company stated that it does not foresee BETG itself undertaking the construction of new power plants (id. at 18). However, the Company stated that if a suitable opportunity presented itself, BETG could acquire an equity interest in a new generation project undertaken by a third party (id.). The Company stated that, at present, if BETG were to acquire an interest in a generating plant, it would not sell the power from such plant to BECo; the

Company also stated that it is not seeking approval for this type of sale through its application in this case (id.).

B. Tax Sharing Agreement with BETG

The Company is also seeking approval of a tax sharing agreement between itself and BETG (Exh. BE-1, at 27). The Company stated that the provisions of the tax sharing agreement are the same as those provisions approved by the Department in connection with the Company's existing subsidiary, Harbor Electric Energy Company ("Harbor Electric") (id.). The Company stated that the tax sharing agreement between BECo and Harbor Electric was designed as a master agreement under which subsequent affiliates would operate (id. at 28). According to BECo, the tax sharing agreement provides that, each year, the Company's subsidiaries calculate their own tax on a stand-alone basis, with certain adjustments, using the marginal tax rate (id.). Each of the subsidiaries is then required to pay to the Company its separate tax liability, if any (id.). In the event that a subsidiary generates a loss or other tax benefit that is utilized by the Company on its consolidated income tax return, the Company would pay to the subsidiary the value of such tax benefits (id.). The Company explained that payments of amounts due under the tax sharing agreement may be made in cash or simply may be accounted for on the books of account between the Company and the subsidiary (id.). The Company stated that in this event, such accounts likely would be considered advances and therefore

would require approval of the Department under Section 17A (id.). The Company, therefore, requests approval to make such advances to reflect amounts that may be payable under the tax sharing agreement (id.).

C. Management Services Agreement with BETG

The Company stated that employees of BECo may serve BETG in various capacities for limited periods of time (Exh. BE-1, at 25). The Company also stated that BETG may use the services of BECo (id.). According to BECo, BETG would pay a market rate for any such use of BECo personnel or services under the terms of the management services agreement (id.; Exh. BE-7). The Company stated that, in general, the management services agreement provides for the identification of, and payment for, all services provided by BECo to BETG (Exh. BE-1, at 26). According to this agreement, BECo employees would keep track of any time spent on performing services for BETG (id.). The cost of this time spent, including overhead expenses, would be charged to BETG (id.). The Company stated that a comprehensive study of the total cost rate that should be charged to the subsidiary already has been performed for the Company by an independent consulting firm (id.). According to the management services agreement, BETG is not obligated to obtain all of its management services from BECo (Exh. BE-7, at 2). The management services agreement provides for an arbitration process for dispute resolution, and requires 90 days' notice for either party to terminate the agreement

(id. at 3-4).

III. THE PROPOSED SETTLEMENTS

A. RMLD Settlement

By its terms, the RMLD Settlement is intended to resolve all issues between BECo and RMLD relating to the Company's proposal. The RMLD Settlement provides that RMLD will not oppose BECo's proposal to invest up to $45 million in BETG, and to enter into a Tax Sharing Agreement and a Management Services Agreement with BETG (RMLD Settlement, Article 1, § 1).

The RMLD Settlement further provides that approval of the Company's petition does not constitute Department approval of the transfer from BECo to BETG of any existing BECo generation facilities or entitlements, and that any such transfer that may be sought in the future will be subject to a future filing with the Department by BECo, with prior notice provided to RMLD and the Attorney General
(id., Article 2, § 1).

The RMLD Settlement further provides that approval of the Company's petition does not constitute Department approval of any future non-utility generator power sales by BETG to BECo (id., Article 2, § 2). If the Company were to propose such sales, the RMLD Settlement provides that these sales would be subject to the statutory and regulatory requirements existing at that time, and that the Company would be required to provide prior notice to RMLD and the Attorney General of any such

proposed sales (id.).

Finally, RMLD Settlement provides that the Company is not seeking authority, nor does it have any intent, to sell or supply electric power for the operation of electric vehicle charging equipment to any customers, including BETG, except to those customers that BECo is otherwise authorized to serve as an electric utility (id., Article 2, § 3).

BECo and RMLD have set a deadline of June 18, 1993 for Department action on the RMLD Settlement (Amended Joint Motion for Approval of Settlement).

B. Partial Settlement

The Partial Settlement filed by BECo, the Attorney General, and CONUG is intended to terminate the proceedings with respect to all issues before the Department except the Tax Sharing Agreement (Partial Settlement at 1).

Article 1 of the Partial Settlement provides that the Attorney General and CONUG do not oppose the Company's investment of up to $45 million in BETG, or the proposed Management Services Agreement with BETG. Article 1 further provides that BECo, the Attorney General, and CONUG will brief the issue of the Tax Sharing Agreement for a later decision by the Department.

Article 2 of the Partial Settlement provides that for the next seven years, unless the Department orders otherwise after notice and hearing, the Company will use the allocation methodology described in the Company's filing, modified to

reflect allocations of employee time and joint plant costs between BECo and BETG.

Article 3 of the Partial Settlement provides that, in order to facilitate future Department review of cost allocation issues, BECo will maintain the following record-keeping practices: (1) when the Company charges BETG a rate for goods or services that is lower than the Company's full embedded costs, the Company will record reasonable offers from third parties to provide like goods or services at market prices, and will maintain records comparing each rate to the Company's marginal cost of providing such goods or services; (2) the Company will record different tax elections made for each business, and the reasons for said elections; (3) the Company will record allocation formulae used for each central service department, and the reasons for any change in said formulas; and (4) the Company will record the provision of any goods or services by BETG to the Company, and the costs and market value of said goods and services.

Article 4 of Partial Settlement provides that BECo, the Attorney General, and CONUG have agreed that the issue of appropriate payment, if any, for any experienced BECo employee who transfers to BETG, or spends the majority of his or her time in a year on BETG matters, may be reviewed by the Department in the context of general rate proceedings.

In Article 5 of the Partial Settlement, BECo agrees that, in the absence of prior written approval by the Department under

G.L. c. 164 § 94B or other applicable statutory or regulatory provisions, the Company will not make any purchases of goods and services from BETG in excess of $100,000, and it will not make any purchases of goods and services that are now utility operations, including, but not limited to, DSM, generating plant operations, or the sale or production of electricity, irrespective of the dollar amount of said purchases.

Article 6 of the Partial Settlement provides that the special conditions set out in Article 2 of the RMLD Settlement are incorporated in the Partial Settlement.

Article 7 of the Partial Settlement provides that, notwithstanding the continuation of this docket to address the Tax Sharing Agreement, the Company will be authorized to organize and invest in BETG and to execute the Management Services Agreement, consistent with the terms of the Partial Settlement.

BECo, the Attorney General and CONUG have set a deadline of June 18, 1993 for Department action on the Partial Settlement (Amended Joint Motion for Approval of Partial Settlement).

IV. STANDARD OF REVIEW

A. Introduction

In assessing the reasonableness of an offer of settlement, the Department must review the entire record as presented in the Company's filing and other record evidence to ensure that the settlement is consistent with the public interest. See Massachusetts Electric Company, D.P.U. 92-217, at 7 (1993);

Boston Edison Company, D.P.U. 91-233, at 5 (1992); Western Massachusetts Electric Company, D.P.U. 92-13, at 7 (1992).

B. G.L. c. 164, § 17A

BECo filed its petition for approval to invest up to $45 million in a non-utility subsidiary and for approval of its Tax Sharing Agreement pursuant to G.L. c. 164 § 17A,[2] which provides in relevant part:

> No gas or electric company shall, except in accordance with such rules and regulations as the [D]epartment shall from time to time prescribe, loan its funds to, guarantee or endorse the indebtedness of, or invest its funds in the stocks, bonds, certificates of participation or other securities of any corporation, association or trust unless said loan, guaranty or endorsement, or investment is approved in writing by the [D]epartment.

In Bay State Gas Company, D.P.U. 19886 (1979) ("Bay State I"), the Department noted that no explicit standard of review is provided by Section 17A, or in a judicial or administrative construction of the statute.

The Department, however, has recognized that the primary purpose of Section 17A is to protect ratepayers by assuring a utility's stable financial condition.[3]

In Bay State I, the Department also noted that "... in keeping with the Supreme Judicial Court's interpretation of [G.L.

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[2] G.L. c. 164 § 17A is referred to herein as "Section 17A."

[3] See, St. 1954, c. 95, § 1; "Recommendations of the Department of Public Utilities to the General Court," House Document No. 53, Massachusetts House of Representatives Legislative Documents at 2 (1954); E. Gadsby, 1 Annual Survey of Massachusetts Law, Boston College at 182 (1954).

c. 164,] Section 14, we believe that implicit in the statutory framework in which Section 17A is found is that a proposed investment must be consistent with the public interest..."

In Boston Edison Company D.P.U. 850 (1983) ("Boston Edison"), the Department further defined the parameters of a Section 17A proposal which is "consistent with the public interest":

> The General Court did not, in our view, intend that proposals be held "inconsistent" with the public interest merely because a fair assessment of the relevant factors recognizes that both beneficial and negative aspects may attend those proposals. Consequently, even if a particular proposal has negative aspects, we will find that such a proposal is consistent with the public interest if, upon consideration of all its significant aspects viewed as a whole, the public interest is at least as well served by approval of the proposal as by its denial.

In Bay State Gas Company D.P.U. 91-165 (1992) ("Bay State II"), the Department reaffirmed the standard of review articulated in Boston Edison, that proposals filed under Section 17A must be consistent with the public interest, and that they meet this standard if, upon consideration of all of the significant aspects of a proposal, the public is at least as well served by approval of a proposal as by its denial.

In Bay State II, at 7, the Department further noted that the application of the consistency standard in a Section 17A case is based on the totality of what can be achieved by the proposal rather than a determination of any single gain which might be derived from the proposed transactions.

The Department also found that the consistency standard best

accommodates the Department's interest in protecting the utility's ratepayers from the adverse effects of unwarranted Section 17A transactions and a utility's interest in having flexibility in a changing marketplace to meet the long-term objectives of its ratepayers and shareholders. Bay State II, at 7.

Finally, in Bay State II, the Department articulated some of the factors which should be considered in evaluating Section 17A petitions. These include:

> the nature and complexity of the proposal, the relationship of the parties involved in the underlying transaction, the use of funds associated with the proposal, the risks and uncertainties associated with the proposal, the extent of the regulatory oversight on the parties involved in the underlying transaction, and the existence of safeguards to ensure the financial stability of the utility.

Consistent with the Bay State II analysis, and with the protection of the public interest under Section 17A, the Department finds that, at a minimum, it is appropriate to examine the following factors when a utililty proposes to invest in a subsidiary under Section 17A: (1) the nexus between the proposed subsidiary and the company's core business; (2) the company's proposed investment and its total investment in subsidiaries as a percentage of the company's total equity; and (3) the methods employed in the company's accounting system to protect the utility's ratepayers from cross-subsidization of a proposed subsidiary by the utility.

Accordingly, the Department will approve a proposed

investment in a subsidiary under Section 17A if, upon consideration of all its significant aspects viewed as a whole, and after evaluating the above factors, at a minimum, the Department finds that the investment is consistent with the public interest. Id. at 8.

C. G.L. c. 164, § 94B

BECo filed its petition for approval of a Tax Sharing Agreement and a Management Services Agreement pursuant to G.L. c. 164 § 94B,[4] which provides in pertinent part:

> No gas or electric company shall, without the approval of the [D]epartment, hereafter enter into a contract with a company related to it as an affiliated company, as defined in section eighty-five, covering a period in excess of one year, by virtue of which any compensation is to be paid by the said gas or electric company in whole or in part for services rendered by said affiliated company...

The statute does not set forth an explicit standard of review and, therefore, Department case precedent provides the basis for reviewing Section 94B proposals.

In evaluating Section 94B proposals, the Department requires utilities to demonstrate that (1) the proposal provides a reasonable method of allocating liabilities and benefits between a utility company and its affiliate, and (2) the methods employed in structuring the proposal are sufficient to protect the interests of a utility company's ratepayers. Harbor Electric & Boston Edison Company D.P.U. 90-288-A (1991); Harbor Electric & Boston Edison Company D.P.U. 90-288 (1991).

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[4] G.L. c. 164 § 94B is referred to herein as "Section 94B."

In reviewing a management services agreement under this standard, the Department, at a minimum, examines whether the accounting methodologies provided in the agreement adequately ensure that the utility's ratepayers are not subsidizing the subsidiary's operations, and that the provisions of the agreement are sufficient to minimize a utility's liabilities and ratepayer exposure with respect to the subsidiary's operations.

V. ANALYSIS AND FINDINGS

The Department has evaluated fully the potential impact of the RMLD Settlement[5] and the Partial Settlement (collectively, "the Settlements") under the above standards, in light of the Company's petition, the Company's responses to the Department's discovery, and the testimony, exhibits, and responses to record requests presented at the hearings. The Department notes that the Settlements represent agreements among a broad range of

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[5] The Department notes that at the time BECo and RMLD filed the Partial Settlement, RMLD had not been granted leave to intervene in the case. This procedure is inappropriate. The Department expects that any party to a future settlement agreement will have established its status as a limited participant or intervenor prior to filing a settlement with the Department. Further, we are not convinced that RMLD's concerns could not have been addressed by BECo and RMLD without resorting to the filing of a settlement agreement. While the Department understands that petitioners often can accommodate the concerns and questions of potential intervenors through discussions and/or agreements made outside of a formal adjudicatory proceeding, these types of discussions need not result in settlement agreements requiring Department approval. Here, BECo might have been able to accommodate RMLD's concerns by amending its petition or otherwise clarifying its intent in this case. In this manner, BECo and RMLD could have saved themselves and the Department unnecessary time and costs.

interests, including those representing consumer and municipal concerns.

Since the special conditions of Article 2 of the RMLD Settlement are incorporated in the Partial Settlement, the Department's findings will focus on the elements of the Partial Settlement.[6]

The record reflects that there is a reasonable nexus between the proposed BETG business ventures in DSM, the electric vehicle industry, and the electric generation industry, and the Company's core business.

The Department also finds that the Company's proposed investment of $45 million in BETG, or approximately 4.3 percent of the Company's total equity, represents a reasonable level of investment which is consistent with the public interest of maintaining the stable financial condition of a utility and protecting the Company's ratepayers from harms associated with adverse § 17A transactions. See Bay State II.

The Department finds that the allocation methods proposed by the Company are sufficient to ensure that the Company's ratepayers are insulated from risks associated with the BETG's operations.

The Department finds that the allocation methodology

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6 As described in § III, supra, although the Partial Settlement provides for later Department review of the Tax Sharing Agreement, the RMLD Settlement provides that RMLD does not oppose BECo's entering into a Tax Sharing Agreement with BETG.

for certain joint costs proposed in the Management Services Agreement is a reasonable method of allocating benefits and liabilities between the Company and BETG, and is sufficient to protect the Company's ratepayers. See Harbor Electric Company & Boston Edison Company D.P.U. 90-288 (1991).

The Department finds that the recordkeeping practices described in the Partial Settlement provide additional safeguards to protect the Company's ratepayers from subsidizing the operations of BETG, and is consistent with the concerns addressed in Bay State II in that regard.

The Department finds that the special conditions that require BECo to notify the Department, the Attorney General and CONUG of (1) any proposed transfer of existing BECo generation, ownership interests in generation, or power purchase contracts from BECo to BETG and (2) non-utility generator power sales by BETG to BECo, are reasonable and consistent with both the scope of review in this case and the public interest.

The Department finds that the requirement that, in the absence of prior written approval by the Department under its statutory or regulatory provisions, the Company will not make any purchases from BETG in excess of $100,000, or purchases of goods and services from BETG which are now utility operations, is reasonable and consistent with both the scope of review in this case and the public interest.

The Department finds that it is consistent with the public

interest to defer for consideration in a general rate proceeding, the issue of compensation by BETG to BECo for any experienced BECo employee who transfers to BETG, or who spends a majority of his or her time during a year on BETG matters.

Based on the foregoing, the Department finds that the provisions of the Settlements are consistent with Department standard of review and with the terms that would have been approved by the Department in the absence of the Settlements.

The Department, therefore, finds that it is consistent with the public interest for BECo to organize and invest in BETG and to execute the Management Services Agreement, notwithstanding the continuation of this docket to address the Tax Sharing Agreement. Accordingly, the Department approves the RMLD Settlement and the Partial Settlement.

In accordance with the terms of the Settlements, our acceptance of the Settlements does not constitute a determination as to the merits of any allegations, contentions, or arguments made in this investigation.

VI. ORDER

Accordingly, after due notice, public hearing, and consideration, it is

ORDERED: That the Settlement, filed by Boston Edison Company and the Reading Municipal Light Department, as amended on June 3, 1993, be and hereby is approved; and it is

FURTHER ORDERED: That the Partial Settlement, filed by Boston Edison Company, the Attorney General of the Commonwealth, and the Coalition of Non-Utility Generators, as amended on June 3, 1993, be and hereby is approved; and it is

FURTHER ORDERED: That the petition for approval of the Tax Sharing Agreement will be addressed in a future decision by the Department in this docket, on a schedule to be determined by the parties and the Department.

By order of the Department,

VII. CONCURRING OPINION OF COMMISSIONER BARBARA KATES-GARNICK

I am writing a concurring opinion on the approval of the Settlements on the petition of Boston Edison Company for approval to invest up to $45 million in a wholly-owned subsidiary to be known as Boston Energy Technology Group, Inc. ("BETG"). Although I do not oppose the Company's petition to invest in this subsidiary, I do believe that my fellow Commissioners have lost an opportunity to establish clear guidelines for this type of diversification in what is essentially a case of first impression.

Although the majority has done more than simply stamp BECo's petition "approved", they have made only a minimum effort to establish standards for a proposed Section 17A investment in a subsidiary. Essentially, the majority sets forth the minimum questions that must be asked when a utility proposes to invest in a subsidiary (Order at 14). I would have preferred that this Commission avail itself of the opportunity to adjudicate this case in a timely manner, to consider briefs, and to articulate clear standards on the issue of utility investment in unregulated subsidiaries. My concurrence is based on my continuing interest in seeing that the Department provide clear statements on both process and substance to the community it regulates. See Cambridge Electric Light Company, D.P.U. 92-250 (1993) (Commissioner Kates-Garnick, concurring); Fitchburg Gas and Electric Light Company D.P.U. 92-181 (1992) (Commissioner Kates-

Garnick, dissenting); Letter From Commissioner Kates-Garnick to James P. Finglas of AT&T Communications of New England, Inc., November 25, 1992, concerning Department's approval of "900" telephone service).

My fellow Commissioners indicate that the three factors that must be considered in cases of this type are consistent with the standard of review articulated in Bay State II. However, these "factors" -- (1) the nexus between the proposed subsidiary and a company's core business; (2) a company's proposed investment and its total investments in subsidiaries as a percentage of total equity; and (3) the existence of a reasonable accounting system to protect ratepayers from cross-subsidizations (Order at 14) -- essentially are a pared-down version of the factors applied in Bay State II. I find no fault with considering these three factors, but I would include an expanded analysis of the entire proposal rather than relying on the answers to only three questions. If the Department had taken the time to establish clear and comprehensive standards, companies planning to make investments in subsidiaries in the future would have a real understanding of the Department's goals, concerns, and expectations.

Herein lies the significance of the Department's lost opportunity. As the electric utility market moves into the next century, it is likely that opportunities for establishing subsidiaries and entering new markets will increase. Out of the

Energy Policy Act of 1992 will come new opportunities in DSM and power generation. Therefore, it is unfortunate that the Commission, based on a fully adjudicated case, did not provide the utility community with clear-cut standards, but rather accepted settlements, where intervenors and participants, in a piecemeal fashion, were able to address their very specific needs and interests. I see it as the Department's obligation to define broadly the public interest in such a case rather than to assent to this rush to settlement.

With respect to this case specifically, I do have several concerns. Although the Company indicated the likely areas of BETG's activities in DSM, electric generation services, and electric vehicles, the proposals presented by BECo were unformed and essentially potential activities. In previous cases in which the Department approved investments in subsidiaries, Bay State II, Harbor Electric Company and Boston Edison Company, D.P.U. 90-288 (1991), and Harbor Electric Company and Boston Edison Company, D.P.U. 90-288-A (1991), the planned investment activities were quite clear. Bay State Gas Company was proposing to increase its investment in two existing, functioning subsidiaries, Granite State and Northern Utilities, entities that were subject to the jurisdiction of other regulatory authorities. Harbor Electric Company was formed by BECo for a very specific purpose, that of supplying electric power required by the Massachusetts Water Resources Authority's Deer Island wastewater

treatment center. In those cases, the Department had definite knowledge of the specific activities that it was approving. In this case, for example, the nature of BECo's investment regarding DSM services is less certain, particularly as that market attracts many new entrants. Thus, I believe that ratepayer interests would have been better served if the Department took a bit more time to articulate standards and review BECo's entire proposal.

Similarly, I am not certain how the Department reached its conclusion that an investment of $45 million in BETG, which represents 4.3 percent of BECo's total equity, "represents a reasonable level of investment" (Order at 16). This finding concerns me in light of the investments already made by BECo in Harbor Electric Company and some of the testimony presented in this case. Again, we have lost a real opportunity to establish ratepayer safeguards relating to level of investment, an issue that likely will occur in future cases. I consider this approval to be another example of a case-by-case decision-making approach to utility regulation rather than an approach of providing clear guidelines on important issues that will occur in many future cases.

In approving the Settlements, the Commission only addressed issues of concern to the intervenors and the limited participant. One of the issues left unaddressed in this Order relates to foreign investment. As the utility industry in this country

continues to mature, foreign investment opportunities will become more appealing both for utility subsidiaries and for Exempt Wholesale Generators. I would prefer to have addressed the implications of foreign investment on BECo ratepayers in this Order. BECo's responses on the record concerning this subject were quite vague (RR DPU-12). Ratepayer interests are not well-served by declining to address an issue that promises to be of increasing importance in the national debate.

Finally, I have some serious concerns regarding the evolution of the Settlements presented in this case. Although the Commission appropriately has indicated its displeasure with the RMLD Settlement and how the Company and RMLD have resulted in unnecessary efforts and costs (Order at 16, n.5), I believe that the Partial Settlement also may unnecessarily increase costs and process. Specifically, the Partial Settlement requires that BECo must now come to the Department for approval of any purchases from BETG in excess of $100,000. Neither the Order nor the Settlements provide any rationale for setting this threshold. Again without addressing this issue in the Order, there is no way to determine whether $100,000 or any amount should trigger a Department review. Here, we have lost the opportunity to explore mechanisms that would protect ratepayers and, at the same time, obviate the need for more process.

More importantly, the manner in which these Settlements occurred serves to reinforce my view that the approval of the

Settlements by the majority is a piecemeal response to an important issue. The Department has not presented any standards for this type of investment and, in accepting these Settlements, has forfeited an opportunity to articulate its view. I have no objections to settlements*per se*, nor to the activities proposed by BECo in this case. I, however, do object to my fellow Commissioners' failure to seize an opportunity to provide a reasoned analysis in a timely fashion and their apparent willingness to accede to pressure for settlement. Unlike a rate case, where parties appropriate can fashion a settlement within the parameters of clearly defined standards and guidelines, this type of case is not appropriate for settlement. In the long run, such an approach to decision-making cannot serve the public interest.

Respectfully,

Barbara Kates-Garnick
Commissioner